

SUBCHAPTER 541
PAY UNDER TITLE 38-- SPECIAL RULES FOR NURSES
UNDER THE BAYLOR PLAN

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SUBCHAPTER 541

PAY UNDER TITLE 38--SPECIAL RULES FOR NURSES **UNDER THE BAYLOR PLAN**

- References:**
- (a) Title 5, United States Code
 - (b) Title 38, United States Code
 - (c) Delegation Agreement Between the Office of Personnel Management and the Department of Defense, November 30, 1993, and December 20, 1993, respectively, concerning the use of certain personnel authorities for healthcare occupations
 - (d) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
 - (e) Title 5, Code of Federal Regulations
 - (f) Chapter 8 of title 29, United States Code, "The Fair Labor Standards Act"

A. PURPOSE

This section provides rules for scheduling work and compensating nurses under 5 U.S.C. 5371 (reference (a)) and the Baylor Plan, 38 U.S.C. 7456 (reference (b)), and provides procedures to ensure that such schedules and compensation are implemented consistently and appropriately as provided by 5 U.S.C. 1104 (reference (a)) and the Delegation Agreement between the Office of Personnel Management (OPM) and the Department of Defense (reference (c)).

B. COVERAGE

When authorized for use, this section covers nurses who provide direct patient care services and whose basic workweek consists of two regularly scheduled 12-hour tours of duty on weekends. A nurse covered by this section is considered to be a full-time employee for ALL personnel management purposes.

C. DEFINITIONS

1. **Additional Pay.** A premium paid to a nurse for work outside the Baylor workweek under circumstances or conditions authorized under 38 U.S.C. 7453 (reference (b)). Such pay includes tour differential, holiday pay, overtime pay, and pay for weekend or on-call duty.

2. **Administrative Workweek.** A period of 7 consecutive calendar days coinciding with the calendar week, Sunday through Saturday.

3. **Baylor Workweek.** Two regularly scheduled 12-hour tours of duty entirely within the first and last day of the administrative work week; i.e., Sunday and Saturday. The Baylor workweek is considered to be a full 40-hour workweek for pay and leave accrual purposes.

4. **Baylor Plan.** Two regularly scheduled 12-hour tours of duty entirely within the period beginning at midnight Friday and ending at midnight the following Sunday.

5. **Category of Nurse.** A nurse or group of nurses who performs service within a specialization of the nursing occupation; e.g., operating room nurse, critical care nurse, etc.

6. **Lead Agent.** The officer who, in addition to commanding a medical center within one of twelve geographic regions within the United States, is responsible for coordinating healthcare initiatives within the region. The lead agency has no direct authority over the tri-Service commanders within the region. However, he or she works in a collaborative manner with the Military Health Services System partners to manage the delivery of healthcare within the region.

7. **Medical Treatment Facility.** A DoD health facility staffed and equipped to provide inpatient and/or outpatient medical care to eligible beneficiaries. It may be affiliated with or independent of a dental treatment facility. A medical treatment facility is funded by the Defense Health Program.

8. **Nurse.** A registered nurse, nurse anesthetist, or licensed practical or vocational nurse, but does not include graduate nurse technicians, or student nurse technicians.

9. **Rate of Basic Pay.** The rate of pay fixed by law or administrative action for the position held by the employee including any locality pay under 5 U.S.C. 5304 (reference (a)) or special salary rate authorized under 5 U.S.C. 5305 (reference (a)) and 38 U.S.C. 7455 (reference (b)).

10. **Tour of Duty.** The hours of a day and the days of an administrative workweek that constitute an employee's regularly scheduled workweek, including regularly scheduled overtime work.

11. **Weekend.** The period commencing at midnight on Friday and ending at midnight the following Sunday.

D. POLICY

It is DoD policy under DoD Directive 1400.25 (reference (d)) that:

1. The head of a DoD Component, or his or her designee, may approve the use of the Baylor Plan for a category of nurse in any DoD medical treatment facility under his or her jurisdiction. This authority may be delegated to the commander of a medical treatment facility or its equivalent, but no lower.

2. The decision to approve the use of the Baylor Plan for a category of nurse must be coordinated with the commander(s) and/or director(s) of all other Federal healthcare facilities in the local area to ensure that all Federal nurses in the same situations are treated in the same manner. Dissimilar staffing situations may be considered to be dissimilar situations.

3. The lead agent of the appropriate military health services region must be notified when any provision of 38 U.S.C. (reference (b)) is implemented within that region. The lead agent may monitor the use of reference (b) provisions implemented within the region to determine the impact on healthcare delivery options.

4. Authority to use the Baylor Plan will be approved based on recruitment and retention problems caused by local private and non-Federal public scheduling practices for a category of nurse and presupposes all other available recruitment and retention strategies have been exhausted.

5. When necessary to obtain or retain the services of a category of nurse at a particular activity, the medical treatment facility commander may authorize payment of overtime pay under 38 U.S.C. 7453(e) (reference (b)) for all or part of ANY officially ordered and approved work performed in excess of 40 hours in an administrative workweek, including those regularly scheduled hours of work comprising the Baylor workweek.

6. The medical treatment facility commander shall ensure that all qualified nurse-employees are provided fair and consistent treatment with regard to opportunities to work under the Baylor Plan.

7. The medical treatment facility commander may terminate use of the Baylor Plan for a category of nurse under this section when such pay is no longer necessary to meet recruitment or retention needs. Such termination is not an adverse action. However, an affected employee must be notified of the intent to terminate use of the Baylor Plan as soon as practicable before such use is terminated.

E. DOCUMENTATION FOR USE OF THE BAYLOR PLAN

Decisions to use the Baylor Plan must be prepared by the commander of a medical treatment facility and must include information required by the Deputy Assistant Secretary of Defense for Health Services Operations, as well as a certification that sufficient funds exist to cover the costs of implementing the plan.

F. ADMINISTRATION OF THE BAYLOR PLAN

1. A nurse on the Baylor Plan is deemed to be a full-time employee for all personnel management purposes, including retirement, life insurance, health insurance, workers compensation, reduction-in-force purposes, etc.

2. A nurse on the Baylor Plan performing work OUTSIDE the Baylor workweek is eligible for any applicable additional pay under 38 U.S.C. 7453 (reference (b)) and Subchapter 540 of this Manual, including tour differential, holiday pay, and pay for on-call and weekend duty for that work.

3. A nurse on the Baylor Plan is not entitled to additional or premium pay under

38 U.S.C. 7453 (reference (b)) or any other applicable law for any period included in his or her regularly scheduled 12-hour tour of duty.

4. When determining the creditability of hours of leave without pay for a within-grade increase for a nurse on the Baylor Plan, the number of hours of leave without pay shall be increased by a ratio of 5 hours charged for each 3 hours taken. (That is, each hour of leave without pay will be multiplied by 1.66667.)

G. COMPUTATION OF PAY

1. A nurse on the Baylor Plan is entitled to an hourly rate of basic pay calculated by dividing the employee's annual rate of basic pay by 1248 (rounded to the nearest whole cent, counting one-half cent and over as a whole cent) for each hour of service DURING the nurse's Baylor workweek. (In effect, the hourly rate for a nurse on the Baylor Plan equals 1.6722756 of the nurse's hourly rate of basic pay calculated using the 2087 divisor.)

2. A nurse on the Baylor Plan is entitled to an hourly rate of basic pay calculated using the 2087 divisor (rounded to the nearest whole cent, counting one-half cent and over as a whole cent) as provided by 5 U.S.C. 5504 (reference (a)), for each hour of work OUTSIDE the nurse's Baylor workweek that is not determined to be overtime work under subsection D.5., above.

H. OVERTIME PAY

1. A nurse on the Baylor Plan is entitled to overtime pay under 38 U.S.C. 7453(e) (reference(b)) calculated using the 2087 divisor as provided in section G., above, for each hour of work that is:

a. Within the period beginning at midnight on Friday and ending at midnight the following Sunday, in excess of his or her two regularly scheduled tours of duty;

b. In excess of 8 hours on a weekday; that is, not within the Baylor workweek; or,

c. When approved under subsection D.5., above, all or part of any hours officially ordered and approved in excess of 40 hours in an administrative week.

2. Hours of work during the Baylor workweek shall be credited on an hour-for-hour basis when determining the total hours of work performed during an administrative workweek.

3. A nurse covered by this section is exempt from 5 CFR 551, Subpart E (reference (e)) and Chapter 8 of 29 U.S.C. (reference (f)).

4. Compensatory time off in lieu of overtime pay is prohibited for a nurse on the Baylor Plan.

I. TREATMENT OF HOLIDAYS AND LEAVE

1. A nurse on the Baylor Plan who is excused or prevented from working on a holiday that falls on a regularly scheduled workday during the Baylor workweek may not be charged leave or lose pay for that holiday.
2. Annual and sick leave is charged at a rate of 5 hours for each 3 hours of absence.
3. Accrued annual leave donations and/or contributions made under 5 CFR 630, Subparts I and J (reference (e)), are deducted from a nurse's leave balance on an hour-for-hour basis. When a nurse is in a shared leave status (i.e., using transferred leave under 5 CFR 630, Subpart I or J (reference (e))), he or she is charged 5 hours of leave for each 3 hours of absence.
4. Military leave and court leave are the only types of leave that may be applied, as appropriate, to workdays outside the nurse's Baylor workweek.
5. Upon separation or retirement, a nurse on the Baylor Plan is entitled to a lump-sum payment for his or her accrued and accumulated annual leave based on the employee's hourly rate of basic pay calculated using the 2087 divisor as provided in section G., above.

J. RECORD-KEEPING REQUIREMENTS

The commander of a medical treatment facility, or its equivalent, and the affected director of personnel shall keep adequate records to evaluate the use of this authority as required by the Assistant Secretary of Defense for Health Affairs. Such records shall include:

1. How the authority is used by the facility;
2. The location of the facility;
3. The type of occupations covered; and,
4. Any other pertinent data that may be required to evaluate the overall use of the authority by the Department of Defense or OPM.